

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

	X	
Drivers, Chauffeurs, and Helpers, Local Union No. 639,	:::	
a/w International Brotherhood of Teamsters	:::	
	:::	Case Nos.: 5-CA-35687
	:::	5-CA-35738
Charging Party,	:::	5-CA-35965
	:::	5-CA-35994
- and -	:::	
	:::	
	:::	
Daycon Products Company, Inc.	:::	
	:::	
	:::	
Respondent.	:::	
	X	

RESPONSE TO CHARGING PARTY’S MOTION TO EXPEDITE DECISION¹

Respondent Daycon Products Co., Inc. (“Respondent”) files this Response to Charging Party Drivers, Chauffeurs and Helpers Local Union No. 639’s (“Charging Party”) Motion to Expedite Decision. While Respondent does not oppose this Board acting without undue delay to issue its decision in this matter, Respondent seeks to ensure that the Board fully review the record and consider all relevant facts, legal principles and arguments prior to issuing a decision.²

¹ Although the Motion was apparently filed electronically with the Board on August 12, it was not served on Respondent until August 17.

² Respondent does not mean to suggest that the Board would not otherwise do so. To be sure, Respondent is as anxious as any other party to receive a decision, but wishes only to emphasize that thoroughness should not be sacrificed for speed, especially since there is no basis on which to expedite the decision. In addition, it is noted that Respondent filed a citation to supplemental authority only last week, bringing to the Board’s attention the recent case of Sutter West Bay Hospitals, 356 NLRB No. 159 (May 25, 2011).

In addition, contrary to Charging Party's suggestion, Section 102.94 of the NLRB's Rules and Regulations does not require expedited treatment of the instant case. To the contrary, that Section notes that:

Whenever temporary relief or a restraining order pursuant to section 10(j) of the Act has been procured by the Board, the complaint which has been the basis for such temporary relief or restraining order shall be heard expeditiously and the case shall be given priority by the Board in its successive steps following the issuance of the complaint (until ultimate enforcement or dismissal by the appropriate circuit court of appeals) over all other cases except cases of like character and cases under section 10 (l) and (m) of the Act.

29 C.F.R §102.94(a) (emphasis added).

Thus, the predicate for expedition under the cited rule is that the Board *actually obtain* "temporary relief or a restraining order" from the District Court; only then is the underlying case given priority over any other cases. Id. ("has been procured by the Board"). See also Norelli v. HTH Corp., 699 F. Supp. 2d 1176, 1205 (D. Haw. 2010)(noting that "the Board will expedite review of the ALJ Decision **once the court enters a § 10(j) injunction**")(emphasis added). Stated another way, merely *requesting* injunctive relief from the court is not sufficient to warrant priority treatment by the Board for the underlying matter; instead, the court must actually grant the requested injunction before expedited treatment is allowed.

However, to date the District Court has declined to enter the injunction requested by the Region pursuant to Section 10(j) of the NLRA ("the Petition").³ As the Board has failed to obtain injunctive relief from the District Court, there is no sound basis on which to ask the Board to rush to issue a decision. Indeed, the fact that the District Court has not seen fit to grant the requested injunction undercuts the argument that any decision of the Board must be

³ Chief District Judge Deborah K. Chasanow presides over the Petition filed in the United States District Court for the District of Maryland. Charging Party acknowledges that "[t]he petition is still pending at this time." Motion, p. 2.

expedited. It is also instructive that despite the passage of more than eight months since the Region filed the Petition, and more than six months since the Petition was argued and evidence received, the Region has not requested the District Court to expedite its decision. See NLRB Section 10(j) Manual, §9.2 (“the Region should be prepared to take action if it does not receive a prompt decision from a district court judge”).

Respondent respectfully requests that the Board in reaching its decision fully consider all arguments and issues, and carefully review the entire record. Respondent takes no position on the time necessary to do so, but notes that the time expended to date is not inordinate in comparison to other matters decided by the Board.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, copies of the foregoing Response to Motion to Expedite Decision were electronically filed and served by email upon the following:

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August 24, 2011